

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 15155 of 2007(D)

PETITIONER:

**P.T.MATHEW,
RETIRED MUNICIPAL COMMISSIONER, NJALLANATTU,
PUTHUPALLY MALAYIL, S.H.MOUNT POST OFFICE,
NAGAMPADAM, KOTTAYAM.**

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENTS:

**1. DIRECTOR,
MUNICIPAL ADMINISTRATION, TRIVANDRUM.**

**2. THIRUVALLA MUNICIPALITY,
MUNICIPAL OFFICE, THIRUVALLA, REPRESENTED BY ITS
SECRETARY.**

ADDITIONAL RESPONDENT

**3. THE DIRECTOR
LOCAL FUND AUDIT
VIKAS BHAVAN
THIRUVANANTHAPURAM**

Additional R3 impleaded vide order dated 7-6-07 in I.A.No.6884/07

BY GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.M.JOSEPH, J.

WP.(C) No.15155 of 2007

Dated this the 19th day of June, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is aged 74. He retired in 1987 as Municipal Commissioner. He is called upon to remit Rs.10,000/- for the loss allegedly caused for non-payment of compensation to a private individual as resolved by the Municipal Council in 1979. It was sanctioned by the first respondent in the year 1989.

2. I heard counsel for the petitioner, learned Government Pleader and counsel appearing for the Municipality. The contention of the petitioner is that under Section 295 of the Municipalities Act the Auditor should specify in the report all cases of irregular, illegal or improper expenditure or of failure to recover the money. Under Section 295(9) the Auditors are to give a reasonable opportunity to the person concerned to explain his case. There is a proviso that no surcharge thereunder shall be made after a period of four years from the date on which the expenditure in question was incurred. The

Specific case of the petitioner is that he has not been given an opportunity to explain his side.

3. Learned Government Pleader would submit that this is a case where the Sub Committee of the Local Fund Accounts Committee of the legislature took a decision to recover. Even though they took a decision to recover, the recovery can be effected only in accordance with law, at any rate there should be compliance with the principles of natural justice. Neither the Local Fund Auditor nor the so called Committee has heard the petitioner. Apparently the Sub Committee contemplated that the petitioner would be heard before actually proceeding against him.

In such circumstances, Exts.P1 and P7 are quashed leaving liberty with the additional third respondent to proceed in the matter in accordance with law after issuing notice and opportunity of hearing as contemplated in law against the petitioner.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

